Accused ran 20 feet. Then he threw something over the fence. Accused ran from the spot where I first saw him to the fence where he threw something over. The distance was about 20 feet. P.C. 82 was at my side at the time. P.C. 82 also ran after accused. All the time we kept our torches flashed on Accused. Without the help of my torch I would not have seen anything.

That was the evidence of Farman Shah, elicited, as I say, in cross-examination.

P. C. 82, Abdul bin Mohamed Aziz, said:—

I saw a man walking. He had something gripped under his left armpit. I flashed my torch on him, and so did 1st witness. This man ran to a spot near the fence.

And in Cross-examination:—

I was 20 feet from Accused when I first set eyes on Accused. I flashed my torch on Accused. Accused then ran towards the fence. I saw Accused walk. I flashed my torch on him. Then I saw Accused run towards the fence. When I flashed my torch I saw Accused grip something under his left armpit.

So there we have it quite clearly stated by these two witnesses that when they first flashed their torches the accused was walking, with the bundle gripped under his arm; that he then began to run towards the fence; that having run 20 feet he threw the bundle over the fence; and that the torches were flashed on him all the time.

Now let us examine the accused's evidence to see if it raises any possible doubt. He says:—

As I came out of the lavatory I heard the footsteps of someone running. 1st witness came up and arrested me. I have heard the story of 1st witness. I say I did not run.

I can see nothing in the accused's evidence which seems to raise the slightest doubt. All that we have from him is the statement that he heard the footsteps of someone running, and a denial that he himself ran. And the bare statement that the first witness came up and arrested him.

Upon that evidence I can take no other view than that the learned Magistrate, assuming there had been no evidence of the confession, must inevitably have come to the conclusion that the two police officers had the accused in the light of their torches from the moment when they first saw him to the moment when they arrested him, and that during the time they were chasing him, over a distance of 20 feet, they never lost sight of him. Inevitably, upon that evidence alone, and without the evidence of the confession, he must have convicted the appellant. I should be ignoring the provisions of paragraph (e) of section 448 of the Criminal Procedure Code and of section 168 of the Evidence Ordinance, and of the principles upon which appellate courts act under kindred provisions, if I allowed the appeal.

The appeal is dismissed.

Appeal Dismissed.

NETHERLANDS INDIES GOVERNMENT v. ALLIED COMPANY.

[Orig. Civil Jurisdiction (Brown, J.) November 29, 1946]

Rules of the Supreme Court, Order 2 Rule 4, Order 4 Rule 1 and Order 63 Rule 1—Suit in the name of Netherlands Indies Government—Whether monarchical state must sue in name of Monarch—Writ must state where plaintiffs or their duly authorised representative resides—Failure to do so is an irregularity which can be cured by amendment under Order 63, Rule 1 of Rules of Supreme Court.

In this motion the defendant company applied to set aside the Writ on the following grounds:—

(1) The plaintiff "Netherlands Indies Government" does not exist.

(2) If it does exist it is not recognised as such by His Majesty's Government.

(3) The action is not maintainable by the plaintiff as specified in the Writ.

(4) Even if the plaintiff did exist it could not carry on business at the address specified in the Writ, that is No. 37 Robinson Road.

(5) Order 2 Rule 4 has not been complied with.

It was argued firstly that a foreign sovereign or state can only sue by the name by which it has been recognised; and secondly that the Netherlands is a monarchical state and therefore it is the Monarch alone who can sue in the Courts in tort. It was also argued that Order 2 rule 4 of the Rules of the Supreme Court, has not been complied with as the Writ has not specified the "place of abode" of the plaintiff.

Held, (1) that by virtue of the Netherlands Indies Accountability Act, the plaintiff, the Netherlands Indies Government are a legal entity, capable of holding property and therefore capable of bringing actions in respect of such property;

(2) that there is no authority for the proposition that in the case of a Monarchical State a Writ can only issue in the name of the Monarch; and

(3) that the Writ in this case is wrong as it has failed to state where the plaintiff or their duly authorised representative resides, but this irregularity can be cured by amendment under Order 63, Rule 1 of the Rules of the Supreme Court.

Cases referred to:—

(1) *Colombian Government v. Rothchild* 57 E.R. 514.

(2) *United States of America v. Wagner* (1867) 2 L.R. Ch. App. Cases 582.

(3) *Castaneda and others v. Clydebank Engineering and Shipbuilding Company* (1902) A.C. 524.

(4) *Duff Development Co. v. Kelantan Government* (1924) A.C. 797.

(5) *The Assunta* (1902) p. 150.

MOTION TO SET ASIDE WRIT OF SUMMONS.

G. M. Coltart for the plaintiffs.

K. E. W. Hatchard for the defendants-applicants.

Brown J.:—This is an application by the defendant company to set aside the writ upon the grounds that:—

1. The Plaintiff "Netherlands Indies Government" does not exist.
2. If it does exist it is not recognised as such by His Majesty's Government.
3. The action is not maintainable by the Plaintiff as specified in the writ.
4. Even if the Plaintiff did exist it could not carry on business at the address specified in the writ.
5. Order 2 Rule 4 has not been complied with.

I wish to make it plain at the outset that ground 1 which states that the Netherlands Indies Government does not exist has no political connotation and merely means that, according to the defendants' contention, the Netherlands Indies Government, not being the Sovereign of that monarchical State known as the Netherlands, is not a legal entity which can be recognised in our Courts and has therefore no power to sue. The connotation in ground 1 is wholly and solely legal.

It is clearly the duty of the Court to take judicial cognisance of the status of any foreign State, and there is ample authority for saying that in case of doubt a certificate from the appropriate department of His Majesty's Government is conclusive. The defendant company relies in respect of the first three grounds of the application, on a certificate from the Foreign Office dated 12 June 1946. It is signed by the Secretary of State for Foreign Affairs, and it reads as follows:—

> I hereby certify that His Majesty's Government in the United Kingdom regard, and have since before September 1st 1939 continuously regarded, the sovereignty in the territory of the Netherlands East Indies as vested de jure in Her Majesty the Queen of the Netherlands.

Mr. Hatchard contends that because this certificate says that His Majesty's Government regards the sovereignty as being vested in Her Majesty the Queen and not in the Netherlands Indies Government that is conclusive of the proposition that the plaintiffs have no power to sue and that the writ should have been brought in the name of the Queen of the Netherlands. Apart from the authorities I should have no hesitation in holding that that is too narrow a view to take of the construction of the certificate, and that its meaning and purport is that His Majesty's Government recognises that the legal sovereignty of these territories is vested in the Netherlands, and not in any other State, person or body of persons.

The proposition is twofold: firstly, that a foreign sovereign or state sues by the name by which it has been recognised; secondly, that the Netherlands is a monarchical State; and that in the case of a monarchical State it is the Monarch alone who can sue in our Courts in tort. I say 'in tort' because I appreciate the distinction between a case in tort and a case in contract, where the contract has been made by a specific person on behalf of his Government. In the latter case he has a right to sue as a party to the contract, independent of the considerations which are under discussion in this case.

In approaching the authorities I think it is desirable that the approach should be chronological for two reasons; firstly, because in the course of the nineteenth and twentieth centuries ideas of sovereignty have not remained static, and secondly because it is important to note the expressions of opinion in the later cases upon the judgments and dicta in the earlier authorities.

The first case was in 1826 and is the *Colombian Government v. Rothchild*[1] where it was held on a demurrer that the plaintiff who was described as the "Colombian Government" could not sue in that form. The reason for that decision was that the Government of Colombia was an unknown and undefined body, and that it was not an legal entity on which process could be served if the defendants should file what we should now call a counterclaim. The ground of that decision, as explained in the judgment of Lord Cairns in the

later case of *U.S.A. v. Wagner*[2], is clear and understandable. The Colombian Government was not a "person" (I use the word in its widest legal sense) against whom process could be served, and if allowed to take part in litigation in that form the opposing litigant would be deprived of his remedy, if it was found that he had one.

The next case was in 1867 and is the *United States of America v. Wagner*[2]. In that case the contention of the defendants on a demurrer was that the United States of America could only sue in the name of their President. It was admitted that the property claimed in the suit belonged to the United States of America, and Turner, L.J. referred to "the inflexible rule of this Court, that suits can be brought only by the persons or bodies to whom the property in question belongs, or who have some right or interest in it." The defendants, in support of their demurrer, relied on the *Colombia* case. The Lord Chancellor, after pointing out that what we should now call the cause of action in the *Colombia* case was a claim for an account said this :—

"Now I do not understand this to be a decision that the State of Colombia could not be plaintiffs in a suit instituted for the recovery of the property of the State,"—that is the claim by the Netherlands Indies Government in this writ which is before me—"much less that they could not sue unless they appointed some public officer, having himself no interest in the subject in litigation, to represent their rights. The Vice Chancellor, by the words, 'It must sue in the names of some public officers who are entitled to represent the interests of the state' must have referred to some persons or body in which the interests of the state were vested, and who were, therefore, entitled to represent it in a suit."

There was no question in the *United States of America v. Wagner* case of the defendant being deprived of his remedy if the writ were allowed to stand in the name of the United States of America. If the defendant wished to obtain discovery he could apply to the United States to name some person from whom this discovery sought could be obtained, and until the name had been furnished the Court would have stayed proceedings. In the present case we have exhibited in Court a Power of Attorney from the Lieut. Governor of the Netherlands Indies appointing Dr. Willem de Vries as the agent of the Netherlands East Indies, with power (inter alia) to enforce all actions, suits, or legal proceedings touching the recovery of all goods which the Netherlands Indies Government may claim and to give evidence and to make discovery.

Now applying the two authorities which I have so far dealt with to the matter which is before me, let me at this stage put this question: Is the Netherlands Indies Government an unknown and undefined body in which no property can be vested, or is it a legal entity capable of holding property like any other legal person? The answer is to be found in Article 1 of section 1 of the Netherlands Indies Accountability Act, a copy of which has been exhibited :—

> The Netherlands Indies are a legal entity (persona standi in judicio).
>
> The properties, assets and liabilities of the Netherlands Indies are separated from those of the Netherlands.

Clearly then the plaintiffs are a legal entity, capable of holding property. It appears to me that that would dispose of the matter, and would cut away any support on which the defendants rely in the Colombia case, if the Netherlands were a republican State. In both the authorities so far dealt with, the State in question has been a republican State. A point has been taken that the Power of Attorney appoints Dr. de Vries as agent of the Netherlands *East* Indies. There would be more substance in the point if instead of the Power of Attorney using the expression Netherlands East Indies the Writ had done so. That might have given rise to the question whether the plaintiff is the Government of that legal entity which is created by the Accountability Act. As it is the Power of Attorney, which bears the heading "Netherlands Indies Government" clearly gives the powers set out therein to Dr. de Vries in respect of the Netherlands East Indies.

Now is there any authority for the proposition that in the case of a monarchical State the writ can only issue in the name of the Monarch?

Mr. Hatchard referred to the judgment of Lord Cairns in *United States of America v. Wagner* where he said that "in the Courts of Her Majesty, as in diplomatic intercourse with the government of Her Majesty, it is the sovereign, and not the state, or the subjects of the sovereign, that is recognised . . . In him individually, and not in a representative capacity, is the public property assumed by all other states, and by the Courts of other states, to be vested." But that assumption may be rebutted, and in my view it is clearly rebutted in this case by Article 1 of Section

1 of the Netherlands Indies Accountability Act. Sir G. Turner L.J. in the *United States of America v. Wagner* case said: "In the cases referred to, the form of government was monarchical; and I take it that in such cases the public property of the state, *so far as it is not by the constitution of the state otherwise destined*, vests in the sovereign." In the year 1867 the ideas of constitutional monarchy were gaining ground, but it was by no means the universal form of monarchy in Europe. It would be interesting to know, if Sir George Turner were able to re-write his judgment to-day, whether his reference to the possibility of the monarch's position being modified by constitutional facts would still be by way of a parenthesis.

Next in chronological order we come to the case of *Castaneda and Others v. Clydebank Engineering and Shipbuilding Co.*[3]. The head-note to that case begins: "There is no such rule as that the monarch or other titular head of a foreign sovereign State is the only person who can sue here in respect of the public property or interest of that State." But I do not think that that case is of much assistance because there the claim was on a contract, and the decision was clearly based on that ground. The question in that case was not whose property was it, but who had the legal right to administer the property and enforce the contract; and it was held that the right to deal with the property was in the Spanish Minister of Marine for whom the contract was made. But although the law which was under consideration in that case was the law of contract and the law of agency, one short passage from the judgment of Lord Halsbury is, I think, material to this case. It is at page 532 of the report: "Will the suit of this Minister keep these respondents safe against a subsequent demand from the King?" Let me put the same question in this case. Will the suit brought in the name of the Netherlands Indies Government keep the defendants safe against a subsequent demand from the Queen? It was contended that in law it would be possible for Her Majesty to come here and sue after judgment had been recovered by a body, that is the plaintiff, which only purported to have the right to sue. But I cannot see how the right of the plaintiff can be said to be only purported in view of the Accountability Act, which makes them a legal person and which expressly refers to their properties, assets and liabilities. And if they succeed in establishing that property which they are claiming is a part of the 'properties and assets' which the Accountability Act entitles them to hold, I know of no possible legal process by which Her Majesty, in the face of the Accountability Act, could claim from the defendants in respect of property which the Court had found to be vested in the plaintiffs.

The last case (in point of date) to which I was referred was *Duff Development Co. v. Kelantan Government*[4]. As in the present case, the writ was issued in the name of the Kelantan *Government*, and not in the name of the Sultan. As in the present case, there was a certificate in which no reference to the Government was made but certifying that His Highness the Sultan was the Sovereign Ruler. Mr. Hatchard seeks to distinguish that case from the present upon the ground that in that case the proceedings arose out of an arbitration, which was upon the construction of a Deed, the Deed being in the name of the Government of Kelantan. He says that as in the Clydebank Case, where the point was that the contract had been made on behalf of the plaintiff who was the Spanish Minister of Marine, so in the Kelantan Case the Deed had been entered into in the name of the Government of Kelantan, and that the case is irrelevant to the matter which is under consideration in the present case. I should understand that if the proceedings in the Kelantan Case, which are the subject of the report, had been proceedings arising out of the Deed or out of the arbitration upon the Deed. But the proceedings arose out of an order obtained by the Company from the King's Bench Division under section 12 of the Arbitration Act giving the Company leave to enforce the award against the Government of Kelantan, which order was set aside, on the application of the Government of Kelantan upon the ground that Kelantan was a sovereign independent State and the Court had no jurisdiction over it. For this reason the case seems to me directly in point. One of the issues was whether Kelantan was a sovereign independent State, and whether the Government of Kelantan being the Government of a sovereign independent State could claim immunity. The certificate from the Colonial Office stated that the Sultan was the Sovereign Ruler, and no reference at all was made in the certificate to the Government. The point of that case, and the reason why it is directly in point, is that at no time, either in the course of the arguments or in the judgments, was it suggested that because the certificate stated that the Sultan was the Sovereign the Government of Kelantan had no 'locus standi' before the Court or that the Government of Kelantan could not claim the privilege of immunity

as a sovereign State if in fact its Ruler was sovereign and independent. The date of that case was 1924.

I hold that upon the first three grounds this application fails.

Ground 4 of this application is that the plaintiff, the Netherlands Indies Government, is stated in the writ to have "its place of business at No. 37 Robinson Road, Singapore;" and ground 5 is that the provisions of Order 2 Rule 4 have not been complied with because that rule requires that the writ shall specify (inter alia) the "place of abode" of the plaintiff. It is not disputed that the writ is wrong in these two respects in that it fails to state where the plaintiff or their duly authorised representative resides, and all that I have to consider is whether it is an irregularity which can be cured by amendment under Order 63 Rule 1.

The only authority which was referred to on this part of the application was *The Assunta*[5] That was a motion to set aside an Admiralty writ in rem upon the ground that the writ was in the name of a firm which did not consist of two or more persons, which contravened the provisions of Order 48A Rule 1 of the White Book. The writ was issued at the suit of "Louis Dreyfus & Co.", and the plaintiff was in fact one person "Louis Dreyfus, 42 Rue du Louvre, Paris, trading as Louis Dreyfus & Co., 194, Bishopsgate Street, London." There the defendants had taken a fresh step in the action, because they had applied for security for costs, and it seems to me that in accordance with Order 70 Rule 2 that alone would have been a sufficient ground for dismissing the application. But upon the main ground which was argued, if upon the face of the writ the words "Louis Dreyfus & Co., as owners" or "Louis Dreyfus, as owner" had appeared, the writ would (according to the former Admiralty practice which the learned President held had not been abrogated by the rule) have been perfectly good. And in the endorsement on the back of the writ the plaintiffs were stated to be suing "as owners" of the goods in question. It was held that in the circumstances the mistake was a mere irregularity, and an amendment was allowed.

Now in the present case if I had held that the suit was wrongly brought in the name of the Netherlands Indies Government, clearly that would have been a radical error which could not be cured by amendment. But the plaintiff's mistake has been that they have contravened Order 2 Rule 4 and Order 4 Rule 1 by stating what purports to be the plaintiff's business address and not the plaintiff's residence. Mr. Hatchard has pointed out that a foreign Government must reside in its own territory, and cannot reside in Singapore. I am not sure that I entirely agree with that as a statement which is wide enough to cover every possible circumstance. But in this case they have a duly authorised agent residing in Singapore. I think that I have to decide whether substantial justice requires this mistake on the part of the defendants to be remedied. I think it does. The application to set aside the writ is refused.

I order (1) that the application to set aside the writ be dismissed.

(2) That plaintiffs be at liberty to amend the writ by deleting the words on the back "whose place of business is at No. 37 Robinson Road, Singapore" and by substituting therefor the words "whose duly authorised representative is Willem de Vries of 3rd floor, K.P.M. Building, Singapore."

(3) Costs of application to be taxed and paid by defendants to plaintiffs, except for the sum of $25 as being agreed costs on grounds 4 and 5 of application.

Order Accordingly.

QUEK THIAM TING AND ANOTHER v. REX.

[App. Crim. Juris. (Brown, J.) November 30, 1946]

Price Control Proclamation, Section 7 (a) and (b)—Price Control (Whisky and Gin) Order, 1946—Selling Scotch Whisky above control price—Ambiguity of charge—Whether commodity in relation to which offence is alleged to have been committed must be strictly proved to be Scotch Whisky.

The first appellant is the father of the second appellant and is the sole proprietor of a shop in Havelock Road where he has held a Retail Liquor Licence for over 10 years. Both appellants were convicted by the District Judge, Singapore, of refusing to sell one bottle of Scotch Whisky under Section 7(b) of the Price Control Proclamation No. 9; and the first appellant was also convicted on two further charges of selling 6 reputed quart bottles of Spey Royal Scotch Whisky on the 13th of June 1946 and 2 reputed quart bottles of Spey Royal Scotch Whisky on the 23rd of June 1946, at a price in excess of the controlled price laid down in the Price Control (Whisky and Gin) Order, 1946. The facts were as follows: On the afternoon of the 3rd July 1946 a Revenue Officer was sent to the shop and asked the second appellant for one bottle of Scotch Whisky. The reply was "I have no such liquor." This having been reported to his superiors, a Customs Officer with an Assistant Supervisor of Customs